
United States
Circuit Court of Appeals
For the Ninth Circuit.

PORTLAND WOOD PIPE CO., a Corporation,
et al., *Appellee,*

VS.

CRANE CREEK IRRIGATION DISTRICT, a
Corporation, and SUNNYSIDE IRRIGATION
DISTRICT, a Corporation, *Appellants.*

SUPPLEMENTAL TRANSCRIPT
OF RECORD

*Upon Appeal from the U. S. District Court for the
District of Idaho, Southern Division.*

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SUPPLEMENTAL TRANSCRIPT OF RECORD.

*Upon Appeal from the U. S. District Court for the
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“The paper marked ‘Defendants Sunnyside and Crane Creek Irrigation Districts’ Exhibit B, is the original contract entered into on the date therein mentioned, between Crane Creek Irrigation Land and Power Company, and Sunnyside Irrigation District.”

The exhibit referred to as “Sunnyside and Crane Creek Irrigation Districts’ Exhibit B” is in words and figures following, except that the plans and specifications thereto attached have been omitted there-

from, and we ask that the Court make an order transmitting and requiring the original plans and specifications attached to said original contract "Exhibit B" to be forwarded with and as a part of the record on appeal in the above entitled action.

This Agreement, made and entered into in duplicate this 22d day of August, 1910, by and between the Crane Creek Irrigation Land and Power Company, a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal place of business at Weiser, Washington County, Idaho, (hereinafter called the "Company") the party of the first part, and the Sunnyside Irrigation District, a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal place of business in said district in Washington County, State of Idaho, (hereinafter called the "District"), the party of the second part,

Witnesseth: That, whereas, the Company has acquired the right to store, impound, divert and distribute for irrigation, power and domestic purposes certain waters of Crane Creek, in Washington County, Idaho, and the tributaries thereof, and the flood waters flowing therein, under certain water rights and water appropriations hereinafter more particularly described, and,

Whereas, The Company is also the owner of a partially constructed irrigation system, consisting of a dam site, reservoir, dams, canals, and other structures being constructed for the purpose of storing,

impounding, diverting and distributing, under the water rights and water appropriations above referred to, the said waters of Crane Creek and its tributaries, and is also the owner of certain water rights of way for said reservoir, dams, canals and other structures being constructed and about to be constructed and situate in the County of Washington, State of Idaho, and,

Whereas, the District is a corporation duly organized under the laws of the State of Idaho, and has full power and authority to acquire and hold, appropriate and maintain reservoirs, canals, dams, aqueducts, ditches, pipe lines, tunnels, flumes and other structures and irrigation works for storing, impounding, diverting, carrying and distributing water for irrigation purposes to lands and holders of lands within the boundaries of said Sunnyside Irrigation District, in accordance with the statutes of Idaho, in such cases made and provided; and,

Whereas, for the consideration hereinafter stated, the Company hereby agrees to sell and agrees to convey, and the District hereby agrees to purchase and agrees to receive conveyance of that certain portion of said water rights, water appropriations, and rights of way more particularly hereinafter described, and that portion of such works and irrigation system as constructed, as the times and in the manner hereinafter particularly set forth; and the Company for said consideration, hereby agrees to convey to the District together with said portion of said water rights, water appropriations and rights

of way, that certain portion of the reservoir, dams, canals, pipe lines, flumes, laterals and other works composing such irrigation system completed within the time and in the manner hereinafter particularly set forth;

Now, Therefore, in consideration of the premises, and in consideration of the sum of Ten Dollars (\$10.00) by each of the parties hereto to the other in hand paid, and in consideration of the mutual covenants and agreements herein contained to be kept and performed by the parties hereto, respectively, and for the purpose of evidencing an understanding and agreement between the parties hereto, the said parties have agreed and hereby do agree as follows, to-wit:

I.

That said reservoir, dams, pipe lines, flumes, canals, laterals and other structures forming part of said irrigation system, all situated in Washington County, Idaho, shall when completed substantially conform to the plans and specifications prepared by A. J. Wiley and Z. N. Vaughn, hereto attached and made a part of this contract, and such additional plans and specifications as may hereafter be approved by the parties in the manner hereinafter provided.

II.

The property to be conveyed is:

(a) An undivided thirty-five and twenty-six one-hundredths per cent. (35.26%) interest of, in and to

that certain permit No. 1720, issued by the State Engineer of the State of Idaho, under date of December 16, 1905, to one Edwin D. Ford, and recorded in Book 6 at page 1729 of the records in said State Engineer's office at Boise, Idaho, and heretofore conveyed to the Company, together with a like proportion of all the water thereby appropriated and all rights acquired under said permit; also thirty-five and twenty-six one-hundredths per cent. (35.26%) of the right of all flowage through the Northwest quarter of the Northeast quarter and the North half of the Northwest quarter of Section 19, Township 12 North of Range 2 West of the Boise Meridian, in Idaho; also thirty-five and twenty-six one-hundredths per cent. (35.26%) of the right of flowage through the Northeast quarter of Section 24 in Township 12, North of Range 3 West of the Boise Meridian, in Idaho, heretofore conveyed to the Company by Edwin D. Ford and Hortense A. Ford, under date of May 9, 1910.

(b) An undivided thirty five and twenty-six hundredths per cent. (35.26%) interest of, in and to all the singular such rights of way for canals, flumes and laterals as may be used in common by said District, the Company and its other grantees, acquired by the Company by purchase or by filing maps thereof as required by the Regulations of the General Land Office of the United States, and the Acts of Congress in relation thereto, including an undivided thirty-five and twenty-six one-hundredths per cent (35.26%) interest of, in and to said reservoir site as

described in that certain indenture, dated May 9, 1910, between Edwin D. and Hortense A. Ford and the Company, which said indenture is of record in Book of Deeds at Page of the Records in the office of the County Recorder of Washington County, Idaho.

(c) An undivided thirty-five and twenty-six one-hundredths per cent (35.26%) interest of, in and to all canals, pipe lines, flumes and aqueducts situate wholly without the boundaries of said irrigation district, as shown upon the plat attached hereto and used in connection with said district, or appurtenant thereto.

(d) All and singular the main canals, distributing laterals, pipe lines and flumes situate wholly within the boundaries of said irrigation district, as appear from the plat hereto attached, subject to the conditions hereinafter mentioned, including all the rights of way for the same now owned or hereafter to be acquired by the Company.

III.

Modifications in the plans and specifications above referred to may be made with the consent of the Engineer of the Company, and the Engineer of the District, and where they cannot agree, then by an engineer by them jointly selected, but which third engineer shall in nowise be connected with the Company, the District, or with any contractor or sub-contractor on the work; provided that no modifications of such plans or specifications shall be made other than such as may be found necessary because of the unforeseen

character of the material to be excavated, or conditions to be overcome; and provided that no modifications of such plans or specifications shall be made except such as shall improve the system and works and especially that part of the same affected by such modifications, and provided further that any such modifications shall not invalidate any bond or bonds as hereinafter provided for.

IV.

That the capacity of the reservoir now in process of construction by the Company shall when final conveyance is made hereunder be not less than fifty thousand (50,000) acre feet of water, and when finally completed said reservoir shall have a capacity of approximately seventy thousand six hundred and seventeen (70,617) acre feet of water.

V.

The main canal, pipe lines and flumes carrying the water from such reservoir to the place of use by the District and each main lateral therefrom shall be of the size and have the fall prescribed in the plans and specifications hereto attached.

VI.

The Company agrees to have all the works above described completed by the first day of May, 1912, and the dam to be completed within one year from the date of this contract, and to be of a sufficient capacity to impound all of the water contracted for by the Crane Creek and Sunnyside Irrigation Districts.

VII.

That upon the execution of this agreement, the Company agrees to convey to the District, the receipt of which is hereby acknowledged, an undivided thirty-five and twenty-six one-hundredths per cent (35.26%) interest of, in and to said water right and reservoir site, excepting the right of possession thereof which is to be held until final conveyance, as herein provided; and upon the completion of any portion of said irrigation system, as shown by each monthly estimate in the construction thereof, the Company agrees to convey to the District such completed portion with the same proportion of the rights of way for such system; and upon the completion of the whole of such system within the time above specified, to convey the whole of the undivided interest of, in and to said water rights, appropriations, reservoir sites, rights of way, canals, dams, pipe lines, flumes, laterals and other structures, with the appurtenances, contemplated in this agreement and agreed to be sold and conveyed hereunder, together with the possession thereof to the district; Provided, that within twenty (20) days after the signing of this agreement, and upon the delivery by the Company to the District of the bonds hereinafter provided for, the District will deliver to the Company its coupon bonds of the face value of One Hundred Thousand Dollars (\$100,000.00) and, upon the receipt of the conveyance above referred to, after each monthly estimate, will deliver its coupon bonds to the Company at face value to an amount equal to such part of the entire

bond issue of said District, to be sold and delivered hereunder, as the construction portion of said works of said Company bears to the entire works to be constructed for the use and benefit of said District.

VIII.

The District in consideration of the covenants and agreements herein contained to be kept and performed by the Company, and in full payment for said water rights, irrigation system, reservoir, dams, canals, aqueducts, pipe lines, flumes and other structures forming a part of such irrigation system thus sold and to be sold and conveyed when completed as herein provided, hereby agrees to deliver to the Company in the manner hereinafter provided, the coupon bonds of the District, at their face value to the amount of Four Hundred and Fifteen Thousand Dollars (\$415,000.00).

IX.

In arriving at the amount of the consideration to be paid to the Company by the District, as hereinbefore set forth, the basis is that for each acre of land receiving a full water right, the bonds of the District, in the sum of Fifty Dollars, (\$50.00) shall be paid by the District to the Company; and for each acre of such lands receiving a fractional part of a full water right, the District shall pay the Company the bonds of the District in the same fractional part of Fifty Dollars (\$50.00); the sum in each instance to be determined by the assessment it benefits against said lands, in the manner provided by law. No bonds are to be delivered by the District to the Company

for those lands against which no benefits are assessed.

X.

The District is fully aware that the Company shall have the right to sell and transfer the bonds so delivered and to be delivered to the Company by the District hereunder, to divers persons, and by reason thereof any failure on the part of the Company to comply with the terms of this agreement, or any of them, shall in no wise affect the validity of such bonds or any of them as binding obligations of the District.

XI.

All conveyances provided for herein shall be by good and sufficient deed and in the usual form and shall be of such character as will meet the approval of counsel for the respective parties hereto, and all property conveyed shall be free and clear of all incumbrances.

XII.

It is understood and agreed that the acceptance by the District of the conveyance of the constructed portions of the work as completed by the Company, based on the monthly estimates, shall in no case be deemed a final acceptance of such property or any part thereof, or be deemed a waiver of any rights of the District to require a full conveyance of that portion of the entire system contemplated under this agreement, when the same shall be fully completed as herein provided, nor a waiver of any right to object to any imperfect work, or construction whether

as to workmanship or materials used relative to any conveyed or other portion of such work until finally accepted as herein provided, nor a waiver of the right of the District to require before acceptance, that all faulty or imperfect work, or materials, or construction, be torn out and rebuilt in accordance with the plans and specifications therefor before final acceptance of the same.

XIII.

The Company will furnish all material and build a suitable dam at the place designated in the plans, according to the plans and specifications therefor; together with all canals, main laterals and waste ways necessary to carry the water required for the lands situated in said irrigation district, and of sufficient capacity to, under normal conditions, and without endangering the strength of said canals and main laterals, carry the water contemplated to be stored for the District under this contract, all of the same to be built and constructed in the manner approved by the Engineer of the Company and according to the plans and specifications therefor.

XIV.

The Company will build and construct, at its own proper cost and expense, a telephone line along the right of way of said canal to the dam site, to be conveyed to the District, but reserving unto the Company the perpetual right to use and occupy said poles for the purpose of carrying its own telephone wires; the cost of maintaining and renewing said telephone line after the completion and acceptance by the Dis-

trict, to be shared by the parties thereto in proportion to their respective interests; and it is hereby stipulated that the interest of the District in the same is to be a thirty-five and twenty-six one hundredths per cent (35.26%) interest.

XV.

The Company will furnish said District 24,900 acre feet of water to be stored in each season in said reservoir, delivered in the reservoir, and to be used as desired by the District during the irrigation season in each year, as part of the consideration of this contract; provided, however, that in the event there shall be a shortage of water in any season, caused by no fault or neglect on the part of the Company, and the water stored in said reservoir shall not equal the maximum amount stored therein under ordinary conditions in ordinary years, then and in that event, the District shall pro rate with the other tenants in common of said reservoir, the actual amount of water stored therein for said season in proportion to the interest owned by the District in said reservoir, that is to say: thirty-five and twenty-six one hundredths per cent (35.26%) of the entire amount of water stored for said season, and it is expressly contracted that the Company shall not sell a greater amount of water, or interest in said system representing a greater amount of water in the aggregate, including the water and interest it has hereinbefore contracted to sell to the District, then the total amount of water, which, in ordinary years, under ordinary conditions, shall be stored in said reservoir.

If for any reason any portion of the acreage included within said District, and for which is included in this contract a water supply, should lie above the main canal as finally determined and constructed, or against which no benefits shall be assessed, a deduction shall be allowed in the above amount at the rate of fifty dollars (\$50.00) per acre for all acreage excluded, and the quantity of water to be furnished shall also be reduced at the rate of three (3) acre feet of water for each acre so excluded, and the interest in the reservoirs, rights of way and main canals situate outside of said irrigation district, shall also be reduced proportionately.

XVI.

It is covenanted and agreed that no bonds shall be issued, or water rights or maintenance charges taxed against any lands within said district which receive no benefits from the irrigation works and against which no benefits shall be assessed by the District.

XVII.

On all bonds delivered by the District to the Company, the Company agrees to reimburse the District for the interest paid thereon for the time from the date of the issuance of the bonds until the completion of said system by the Company, and the acceptance of the same by the District. The Company agrees to advance and pay for the District, the interest due on July 1st on said bonds, of the first irrigation season after the completion of said system. The District to repay said advancements to the Com-

pany on the first day of January, following the first irrigation season said water is used by the District.

XVIII.

It is further understood and agreed, as part of the consideration and purchase price of said irrigation works, that the exclusive right to the perpetual use of all water stored in said reservoir site by means of said proposed dam, or any dam, or otherwise, for power and other purposes at any point or points between the dam and the head-gate of the main canal, is hereby reserved to the Company, its successors and assigns forever, provided, however, that such use for power and other purposes shall not in any way interfere with the use of said water by the District whenever needed for irrigation purposes; and provided, further, that whenever the water is so used for such power or other purposes, the duty and cost of patrolling the dam shall be borne entirely by the Company.

XIX.

It is further covenanted and agreed that the use of water furnished to said District under this contract is to be, and the same is hereby limited to those certain specified tracts which are included within the boundaries of said District, as the same existed at the time of the bond issue and against which are assessed the benefits of said irrigation system.

XX.

It is understood and agreed that the Company reserves and shall have the sole right to contract for and sell in the future any and all water which may

be needed by any lands within (or without) said irrigation district, as the boundaries thereof now exist or as they may be hereafter extended, against which no benefits, or merely nominal benefits are assessed, and to have the use of any canals or laterals owned by the District to transport the same under the direction of the District to the persons to whom it may sell water; provided, it builds such canals of sufficient size to provide for future requirements in the first instance or that it enlarge said canals at its own proper cost and expense when needed, and pay the same rate or proportion of the maintenance charges as is paid by the other land owners, and provided, further, that in the event the Company shall desire to enlarge said canals as hereinbefore set forth, it shall do so at such times and in such manner as not to interfere with the use and enjoyment of the District of its water and vested rights; and the Company further reserves to itself the sole and exclusive right to enlarge the storage capacity of said reservoir, but only in accordance with the plans and specifications to be approved by the State Engineer of the State of Idaho, before such enlargement; and provided, further, that such enlargement shall be made in such manner as not to endanger the property and rights of the District; and provided, further, that in the event the Company shall enlarge said reservoir to a capacity in excess of 70,617 acre feet, then and in such event in case of shortage of water or in extraordinary or dry seasons, the District will not be required to prorate the water to be stored in said res-

ervoir, as provided in Section XV of this contract, with the other tenants in common to the extent of more than 70,617 acre feet, that is to say that when any season shall be less than 70,617 acre feet, the District shall prorate only with the other tenants in common owning the first 70,617 acre feet, including the District, but when the amount of water stored equals 70,617 acre feet or more the District shall be entitled to its full quota of water provided for under this contract.

XXI.

It is further agreed that before any petition for the annexation to said District of adjacent lands, shall be granted, the directors of the District shall cause petitioners named in said petition to pay or provide satisfactory security for the payment, in addition to any other amount which is provided for, the sum of Fifty Dollars (\$50.00) per acre, with interest, as a maximum, which shall be paid to the Company upon its furnishing the additional amount of water required to irrigate said land, at the rate of three (3) acre feet of water per acre, and in case said land already has a partial water right the Company may, at its option, accept such reduction from the above maximum as may in its judgment be just and proper, and only such reduction as may be satisfactory to the Company will be accepted by the Directors of said District, provided, that in the event of the taking in of lands under such conditions, the Company shall at its own proper cost and expense, en-

large the canals and laterals to a sufficient capacity to carry said water for said additional lands.

XXII.

As certain lands included in the District are embraced in desert and homestead land entries, title to which is in the United States, and by reason whereof annual assessments for the payment of principal and interest on the bonds of such District cannot be enforced against such lands until title thereto passes to the entryman, the Company hereby agrees to advance and pay to the District, any and all delinquent payments of the holders of such desert or homestead lands, that would be applicable to the payment of the principal or the interest of the bonds of the District, or any of them, until the title to such land passes from the United States to those entitled to receive the same, and in consideration of which the District agrees to adopt and enforce such by-law or by-laws as may be necessary to require the claimants to such lands to pay any and all of the said assessments against such lands annually in advance of the right to use or apply any water from such irrigation system to the irrigation of such lands, or any portion thereof, pending the passing of title thereto from the United States.

And the District hereby agrees to use its utmost endeavors by providing stringent by-laws, and otherwise, to collect all taxes assessed against said unpatented lands on account of the payment of the principal or interest of the bonds of the District,

that may become delinquent, or be not paid by the entryman, and which shall under the provisions of this agreement be advanced by the Company, and when so collected the District will reimburse the Company for any sums advanced by it to the amount collected by the District.

XXIII.

It is further agreed, that upon the completion of the irrigation system and before the final conveyance thereof as herein provided, to the District, the same shall be accepted by a resolution of the Board of Directors of the District, within thirty (30) days after written notice of such completion, showing that the same has been constructed in accordance with the plans and specifications herein referred to, and in the event of a disagreement in relation thereto, the engineer of the District and an engineer to be designated by the Company, shall select an engineer wholly disconnected in every way with the Company or the District, or any contractor on said construction, and a decision of a majority of such three engineers as to whether or not such work has been constructed in accordance with the plans and specifications will, in the absence of fraud, be final, and in the event such works have not been so constructed as determined by such engineers, the Company shall proceed at once to complete the works in conformity with such plans and specifications.

XXIV.

It is contracted that there shall be no charges against the District by the Company, for extra cost

of construction necessitated by any change of plans or any fault or omission contained in the plans and specifications for such system. All such extra expense, if any, to be borne by the Company.

XXV.

The Company shall remove and replace at its own expense, any work that shall have been improperly executed. All work contemplated in this agreement must be done subject to the approval of the engineer of the District, but should there be a disagreement between the engineer of the District and the engineer of the Company over any such work, the same shall be decided by an engineer to be by them jointly selected but which third engineer shall be in no wise connected with the Company, the District, or any contractor on the work, and his decision shall be final in the premises.

XXVI.

It is contracted that the Company shall be responsible for all damages arising from accidents or neglect of the contractors or their workmen in the construction of said system and to hold the District harmless by reason of any such damages arising from the execution of this agreement.

XXVII.

Upon the execution of this agreement the Company agrees to give the District good and substantial bonds in the sum of One Hundred Thousand Dollars (\$100,000.00), Fifty Thousand Dollars (\$50,000.00) of which bonds may be given by a Surety Company and Fifty Thousand Dollars (\$50,000.00) by individ-

uals, and all to be approved by the District, conditioned for the faithful performance of the terms of the agreement by the Company to be kept and performed, and for the construction of the irrigation works covered by this agreement, in accordance with the plans and specifications herein mentioned, and their completion and conveyance within the time herein stated, and for the maintenance of said system for a period of five (5) years, pursuant to the conditions of this contract.

XXVIII.

It is mutually covenanted and agreed by and between the parties hereto that in case the Company shall not increase the storage capacity of its dam and reservoir site to 70,617 acre feet of water, within five (5) years from the delivery and acceptance of the proportion of said irrigation system, etc., contemplated by this contract, then and in that event the Company, by good and proper conveyance will convey unto the District, an additional percentage of interest in and to the reservoir, reservoir site, water permit, flowage rights, canals, flumes, laterals, etc., mentioned and described in Paragraphs a, b and c of the section numbered II of this contract, equal to fourteen and forty-five one-hundredths per cent. (14.45%) thereof, so that the District will own and have a forty-nine and seventy-one one-hundredths per cent (49.71%) interest of, in and to the said described works.

It being understood and agreed that the basis by which the percentage mentioned in this contract are

obtained, is the maximum capacity of the reservoir in acre feet as compared with the amount of water hereby sold in acre feet, so that if the reservoir is increased to 70,617 acre feet capacity the percentage set forth in Paragraph II is correct and shall stand but shall be increased as herein provided in the event the capacity of the reservoir shall not be increased from 50,000 to 70,617 acre feet of water.

XXIX.

It is mutually agreed that the following maps, blue prints, plans and specifications hereinbefore referred to as "the plans and specifications" and endorsed on the face and margin thereof, "E. D. Ford, President, Crane Creek Irrigation Land and Power Company, and O. M. Harvey, President, and A. D. Redford, Secretary, Sunnyside Irrigation District, and C. C. Cleary, President, and Maude Kiser, Secretary, Crane Creek Irrigation District," are hereby referred to and made a part of this contract, to-wit: The attached sheets and writings numbered 1 to 10, both inclusive.

XXX.

It is mutually understood and agreed that the provisions of this agreement shall be binding upon the parties hereto, their successors and assigns.

In Witness Whereof, the respective parties hereto have caused their corporate names to be hereunto subscribed by their respective presidents, sealed with their corporate seals and duly attested by their respective secretaries, the day and year first above

written, pursuant to the authority of a resolution of their respective Boards of Directors.

CRANE CREEK IRRIGATION LAND
AND POWER COMPANY,

By E. D. Ford, Its President.

Attest: E. P. Hall, Secretary.

Crane Creek Irrigation Land
and Power Company,
Idaho, incorporated 1909.

SEAL.

Witnessed by Ed. R. Coulter,

SUNNYSIDE IRRIGATION DISTRICT,

By O. M. Harvey, Its President.

Attest: A. D. Redford, Secretary.

Sunnyside Irrigation District, Corporate

SEAL.

I, A. L. Richardson, Clerk of the U. S. District Court for the District of Idaho, Southern Division, do hereby certify that the foregoing printed transcript is a full, true and correct copy of a certain contract in writing of date Aug. 22nd, A. D. 1910, between the Crane Creek Irrigation Land & Power Co. and Sunnyside Irrigation District, filed and received in evidence upon the hearing of this cause as Sunnyside Irrigation District, Exhibit "B," and that the same was and is a part of the original record on appeal by the said Sunnyside Irrigation District herein.

Witness my hand and the seal of said court this 22nd day of September, A. D. 1915.

A. L. RICHARDSON.

By Pearl E. Zanger, Deputy Clerk.

Deputy Clerk.